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Policy Brief: The House Rules Package for the 109th Congress

Background: Article I, Section 5, Clause 2 of the U.S. Constitution states that “each House may determine the Rules of its Proceedings.” Accordingly, at the start of every new Congress, the House of Representatives adopts new rules, normally the standing rules of the preceding Congress with various changes. (As a continuing body with only a third of its Members elected every two years, the Senate does not pass new rules each new Congress.)

Order of Business: On December 29, 2004, the Rules Committee distributed to Members’ offices the draft rules “package” for the 109th Congress. This resolution is scheduled to be considered by the Republican Conference this evening, January 3rd, for debate and amendments. After the Conference completes its work, the resolution will then be considered by the full House of Representatives on the floor.

On January 4th, the 109th Congress is scheduled to begin with a quorum call and the election of the Speaker. The adoption of the rules package is the next order of business. Typically, a Member of the Leadership offers the privileged resolution (H. Res. ___) consisting of the new rules. At this point, since the rules have yet to be adopted, the House operates under “general parliamentary law,” and precedent generally suggests that means operating under the rules of the preceding Congress. The resolution is thus considered under the one-hour rule “in the House” (and not in the Committee of the Whole), and the Leadership is recognized for one hour, of which 30 minutes is customarily yielded to the Minority. After the time for debate has expired, the Minority is recognized to offer their substitute proposal in the form of a motion to commit. The House then proceeds to vote on both the Minority’s substitute and H. Res. ___ itself.

Summary of the Major Provisions:

- Requires standing committees to have a view toward ensuring against **duplicative programs** under their jurisdiction when they adopt their oversight plan for the 109th Congress. Currently, such plans are due by February 15th and must be submitted to the Committees on Government Reform and House Administration.
- Expands the use of the **suspension calendar** from Mondays and Tuesdays to Mondays, Tuesdays, **and Wednesdays**. The 108th Congress rules package allowed the Speaker to entertain motions to suspend the rules on Wednesdays “as though under clause ___ of rule XV” (the rule that confines the suspension calendar to Mondays and Tuesdays). This authority was set to expire but was extended with unanimous consent. Some conservatives may be concerned that expanding the calendar’s use to Wednesdays led to the passage of more bills that expanded the size and scope of the federal government, and they might question why this process is being formalized.
- Repeals the **corrections calendar** created in 1995 to expedite the consideration of bills to repeal or correct laws or regulations that are “obsolete, ludicrous, duplicative, burdensome, or costly.”

The calendar has not been used often, especially with the availability of the suspension calendar. However, some conservatives may be concerned that, instead of reforming the calendar to make it more readily available (for example, allowing it to apply to unreported bills in addition to reported bills that the Speaker consents to), it is being abolished. For more information on the corrections calendar, please see <http://www.congress.gov/erp/rs/pdf/97-301.pdf>.

- Modifies the **make-up of the House Budget Committee** so that the respective elected leadership may “designate” a representative instead of having he or she be “from” leadership.
- Allows committees to recess subject to the call of the chair for a period of less than 24 hours. The current privileged motion available to committees is limited to recessing from day to day.
- Provides for a **provisional quorum** so that legislative operations may continue in the House in the event of a catastrophe. After a motion to compel Members attendance fails to produce a quorum, the House would proceed with a 72-hour quorum call, followed by the receipt of a “catastrophic quorum failure report” (detailing that the lack of quorum is due to a catastrophe, the number of vacancies due to the catastrophe, the number of Members incapacitated or unaccounted for, etc.), and then additional 24-hour quorum call. After those initial steps, a provisional quorum shall be the number of Members responding to the quorum call.
- Allows Members to use their **campaign funds** to pay for certain official expenses such as handheld communications devices. Compensation for services, office space, furniture, or equipment could not be paid for with campaign funds.
- Restricts the use of the frank for **mass mailings** before an election by expanding the window before a primary or general election from 60 days to 90 days for which a mailing cannot be franked.
- Allows “relatives” to accompany Members or staff on privately funded, officially connected **travel**. The current rule provides for a spouse or child to travel on such trips.
- Revises the procedures for the **Committee on Standards of Official Conduct** (known as the Ethics Committee). (1) The resolution conforms the Code of Conduct in the House to compliance with all applicable laws, regulations, and rules. (2) It requires that no action will be taken on a complaint unless after forty-five days a majority of the committee approves. The current rule requires an automatic investigation. (3) The resolution provides that Members may select a counsel of their choice even though that counsel may represent other Members. (4) Expands the due process protections by requiring that a Member has either the right to an adjudicatory proceeding or the opportunity to submit his or her views whenever an investigative subcommittee alleges that a Member has violated the Code of Conduct.
- Creates a **standing committee on Homeland Security**. The new committee’s jurisdiction will include “overall” homeland security policy and the internal administration of the Department of Homeland Security. In addition, the committee will oversee issues pertaining to: border and port security (except immigration policy and non-border enforcement), customs, cybersecurity, the integration and dissemination of homeland security information, domestic preparedness, research and development, and transportation security.

- Deems the FY05 budget resolution, S. Con. Res. 95, to be in effect for the 109th Congress until a new budget resolution is adopted for purposes of the enforcement provisions of the Congressional Budget Act.
- Reserves the first ten bill numbers (H.R. 1 through H.R. 10) for assignment by the Speaker. Typically, these bill numbers are reserved for legislation of special importance to the Majority. For example, during the 108th Congress, the Medicare Prescription Drug, Improvement, and Modernization Act (H.R. 1) received this special designation.
- Directs the Rules Committee to report a concurrent resolution establishing a joint House-Senate committee to conduct a comprehensive review of the budget process. During the 105th Congress, the Budget Committee established a Task Force on Budget Process Reform to do a similar review of the budget process. The work of that bipartisan Task Force, chaired by Rep. Jim Nussle, heavily influenced the Comprehensive Budget Process Reform Act of 1999 and the Family Budget Protection Act of 2004 – comprehensive budget reform proposals that have received consideration (yet were voted down) by the full House.
- Allows for an extra subcommittee for the Transportation and Infrastructure, Armed Services, and International Relations Committees. Currently, each committee (with the exception of the Appropriations Committee, the Government Reform Committee, and those with an oversight subcommittee) is limited to five subcommittees.
- Clarifies that references to Section 306 of the Congressional Budget Act shall be construed as references to joint resolutions. Section 306 bars consideration of “any bill, resolution, amendment, motion, or conference report” dealing with any matter within the jurisdiction of the Budget Committee. This clarification, included in previous rule packages, ensures that a budget point of order does not lie against a “self-executing rule” issued by the Rules Committee to bring a bill that exceeds the budget into compliance. Normally such a fix is requested by the Budget Committee itself.
- Clarifies that points of order under Section 303 of the Congressional Budget Act shall be determined on the basis of the text made available for floor consideration. Section 303 bars consideration of certain spending bills until the annual budget resolution is adopted. This clarification, included in previous rules packages, aligns Section 303 with the rest of the Budget Act so that a point of order does not lie against a bill “as reported” from committee when it exceeds the budget and then is brought into compliance prior to floor consideration.
- Allows committees to adopt a rule stating that a chairman may offer a privileged motion to request a conference with the Senate whenever the chairman considers it appropriate. Currently, such a privileged motion can only be offered after the approval of the relevant committee.

Status of the RSC Proposals: The RSC submitted a number of proposals designed to improve the workings of the House and to control spending. **None of these proposals were included in the package to be considered by the Republican Conference on January 3rd.** Many of them may be offered by RSC Members as amendments during the Republican Conference meeting. They include:

- (1) **Direct Spending Point of Order (Hensarling):** This amendment allows a Member to raise a point of order requiring an affirmative vote of three-fifths of Members voting for legislation that increases entitlement spending above current law without providing a commensurate offset. The point of order would not apply to any bill that preserves Social Security and any measure that

costs less than \$100 million over five years. The 104th Congress created a similar point of order against any legislation that raised income tax rates.

Note: A similar amendment is likely to be offered by Rep. Mark Kirk of the Tuesday Group (with similar protections for legislation to preserve Social Security). If it is offered, it is unlikely that Rep. Hensarling will offer his version.

- (2) **Rainy Day Fund for Emergencies (Pence):** This amendment requires that any budget resolution reported from the House Budget Committee include a reserve fund for non-military emergency spending equal to a five-year historical average of such spending. This new rule would also set criteria for what constitutes such an emergency and provide a point of order against such spending that is not budgeted for in the reserve fund.
- (3) **Protection of Points of Order (Hensarling):** This amendment creates a separate point of order against any special rule waiving certain points of orders that limit spending, specifically sections 302(f), 303(a), and 311(a) of the Congressional Budget Act. This reform is based on the unfunded mandates procedure adopted by Republicans in 1995.
- (4) **Automatic Votes on Expensive Legislation (Gutknecht):** This amendment would require an automatic roll call vote on any legislation that costs more than \$50 million, including those being considered on the suspension calendar. The 104th Congress required such a vote on appropriations bills, budget resolutions, and legislation increasing income tax rates.
- (5) **Allowing House Debate to Refer to Senate (Feeney):** This amendment would remove current prohibitions restricting House floor references to the Senate or to a Senator's actions. An honest discussion of the business of the nation cannot take place if one Chamber ties its hands and prohibits reference to the other Chamber.
- (6) **Budget Protection Accounts (P. Ryan):** This amendment would establish both a mandatory and a discretionary Budget Protection Account, so that floor amendments can redirect spending toward deficit reduction or tax relief, while realizing true savings by lowering a committee's 302(a) spending allocation.
- (7) **Unveil Hidden Debt Votes (Flake):** This amendment would repeal the so-called "Gephardt Rule" that provides for the automatic passage of a House joint resolution changing the public debt ceiling to conform to the budget. The Gephardt rule currently eliminates the need for a stand-alone vote on increasing the public debt ceiling when a concurrent budget resolution has been adopted. It was repealed in the 107th Congress and reinstated for the 108th Congress.
- (8) **Restricting the Use of the Suspension Calendar (Flake):** This amendment would confine the use of the suspension calendar to Mondays and Tuesdays by repealing the provision that expands its use to Wednesdays.

Outside Groups: The American Conservative Union, the National Taxpayers Union, and Citizens Against Government Waste have all released letters or statements supporting the RSC Rules changes. The Heritage Foundation has released a piece on the need to change House Rules to discourage increased spending.

For more information on any of the RSC amendments, please contact Russ Vought at 226-8581 or russell.vought@mail.house.gov
